1; Evans-Pritchard E-5 (1931, 1936) 1940
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We would emphasize further that blood-feuds only directly involve a few persons and that though they sometimes cause violence between whole local communities—a feud in a wider sense—ordinary social contacts continue in spite of them. The strands of kinship and affinity, of age-set affiliations, and of military and even economic interests remain unbroken; and these strands act like elastic between the sections, being capable of considerable expansion by disturbed political relations, but always pulling the communities together and keeping them as a single group in relation to other groups of the same kind. As we have explained, these strands lessen in number and strength the larger the community, but they stretch even beyond tribal frontiers. Increasing anarchy, increasing difficulty in settling feuds, goes together with lessening frequency of social contacts of all kinds. Social cohesion increases as the size of the community narrows.

VIII

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There are, of course, disputes between Nuer other than those about homicides, but they can be treated briefly and in direct relation to homicide and the feud. In a strict sense Nuer have no law. There are conventional compensations for damage, adultery, loss of limb, and so forth, but there is no authority with power to adjudicate on such matters or to enforce a verdict. In Nuerland legislative, judicial, and executive functions are not invested in any persons or councils. Between members of different tribes there is no question of redress; and even within a tribe, in my experience, wrongs are not brought forward in what we would call a legal form, though compensation for damage (*ruoh*) is sometimes paid. A man who considers that he has suffered loss at the hands of another cannot sue the man who has caused it, because there is no court in which to cite him, even were he willing to attend it. I lived in intimacy for a year with Nuer and never heard a case brought before an individual or a tribunal of any kind, and, furthermore, I reached the conclusion that it is very rare for a man to obtain redress except by force or threat of force. The recent introduction of Government courts, before which disputes are now sometimes

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1: Evans-Pritchard E-5 (1931, 1936) 1940
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settled, in no way weakens this impression, because one well knows how among other African peoples cases are brought before courts under Government supervision which would not previously have been settled in a court, or even settled at all, and how for a long time after the institution of such Government tribunals they operate side by side with the old methods of justice.

Before discussing the chief characteristics of Nuer legal procedure I record that, according to verbal information, for I have never observed the procedure, one way of settling disputes is to use a leopard-skin chief as mediator. Thus, I was told that a man who has a cow stolen may ask a leopard-skin chief to go with him to request the return of the cow. The chief goes first, with several of the elders of his village, to the plaintiff's homestead, where he is given beer to drink. Later they go, with a deputation from the plaintiff's village, to the defendant's village, and here also the chief may be presented with some beer or a goat. The chief is considered to be neutral and a certain sanctity attaches to his person so that there is little likelihood of the deputation being injured. The visiting elders sit with elders of the defendant's village and the chief in one of the byres and talk about the matter in dispute. The owner of the animal gives his view and the man who has stolen it attempts to justify his action. Then the chief, and anybody else who wishes to do so, expresses an opinion on the question. When every one has had his say the chief and elders withdraw to discuss the matter among themselves and to agree upon the decision. The disputants accept the verdict of the chief and the elders and, later, the owner of the animal gives the chief a young steer or a ram unless he is a very poor man, when he gives him nothing.

If a man has a dispute with another of the same neighbourhood they may both go to the homestead of a local leopard-skin chief and lay their spears on the ground in his byre. A man would not plant his spear upright in a chief's byre, and I was told that were he to do so a bystander might appropriate it, as disrespect had thereby been shown to the chief. When both men have stated their views the chief and the elders discuss the matter outside the byre and re-enter it to acquaint the disputants of their decision. The person in whose favour the decision has been given hands his spear to the chief, who either gives it to a friend or spits on it and returns it to its owner. It was clear from the way in which my informants described the whole procedure that the chief gave his final decision as an opinion couched in persuasive language and

1: Evans-Pritchard E-5 (1931, 1936) 1940
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583 627 wife's people do not return all the cattle that have been paid. In such circumstances the debtor does not deny the debt but puts forward a counterbalancing claim on some account or says that he has no cattle to settle it. Often enough he says this even when he has got cattle. The claimant can only be sure of getting his due if he takes it by force from the debtor's kraal or from the herd in the grazing-grounds. If he is strong and has the backing of a powerful lineage he is not resisted, since he has right on his side. Such matters are easily settled within a village and among people who share a common dry season camp because every one realises that some agreement must be reached by discussion and that it must accord with justice. But when the parties belong to different, and maybe hostile, villages, settlement is not so easy. The leopard-skin chief may be employed, in the manner described, to bring the parties together for discussion and some agreement may then be reached, but many such debts are never settled. They are remembered for years. Perhaps some day, maybe in the next generation, an opportunity will occur to steal the cattle.

682 627 If a wife dies in her first pregnancy or childbirth the husband is held responsible. There is no question of a feud arising, but the husband loses the bride-cattle he has paid, since these now become blood-cattle for the loss of his wife. The husband is only responsible if the death occurs during childbirth before expulsion of the afterbirth. If there is any dispute about the mode of death or the number of cattle that are still owing it is settled by a mediator called *kuaa yiika* or *kuaa yiini*, 'the chief of the mats', an office which pertains to certain lineages. This man has no other office and is not an important person in virtue of his role of arbitrator in disputes of this kind. It is easy to obtain compensation, as the father-in-law has the bride-wealth in his possession. There is, moreover, a tie of affinity and neither party is likely to resort to violence.

671 Using these brief notes on some exemplifications of the tendencies in Nuer law we may now state what these tendencies are. We speak of 'law' here in the sense which seems most appropriate when writing of the Nuer, a moral obligation to settle disputes by conventional methods, and not in the sense of legal procedure or of legal institutions. We speak only of civil law, for there do not seem to be any actions considered injurious to the whole community and punished by it. The informants who said that witches and magicians were sometimes killed stated that it was always individuals or groups of kin who waylaid them and killed them in vengeance.

3/x [See pp. 163-64, cat. 116 — Analyst]

1: Evans-Pritchard E-5 (1931, 1936) 1940
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The first point to note about Nuer law is that it has not everywhere the same force within a tribe, but is relative to the position of persons in social structure, to the distance between them in the kinship, lineage, age-set, and, above all, in the political, systems. In theory one can obtain redress from any member of one's tribe, but, in fact, there is little chance of doing so when he is not a member of one's district and a kinsman. The wider the area which contains the parties to a dispute the weaker the feeling of obligation to settle it and the more difficult the task of enforcing settlement, and, consequently, the less the likelihood of it being settled. Within a village differences between persons are discussed by the elders of the village and agreement is generally and easily reached and compensation paid, or promised, for all are related by kinship and common interests. Disputes between members of nearby villages, between which there are many social contacts and ties, can also be settled by agreement, but less easily and with more likelihood of resort to force. The nearer we get to the tribe the less the chances of settlement. Law operates weakly outside a very limited radius and nowhere very effectively. The lack of social control to which we have often referred is thus shown in the weakness of law, and the structural interrelations of tribal segments are seen in the relativity of law, for Nuer law is relative like the structure itself.

A cogent reason why there is little chance of redress between members of different secondary and primary tribal sections is that the basis of law is force. We must not be mislead by an enumeration of traditional payments for damage into supposing that it is easy to exact them unless a man is prepared to use force. The club and the spear are the sanctions of rights. What chiefly makes people pay compensation is fear that the injured man and his kin may take to violence. It follows that a member of a strong lineage is in a different position from that of a member of a weak lineage. Also the chances of a man obtaining redress for an injury are less the further removed he is from the man who has injured him, since the opportunity for violence and the effectiveness of kinship backing lessen the wider the distance between the principals. Since self-help, with some backing of public opinion, is the main sanction it is only operative when

8:Howell E, G-5 (1942-1944)1954
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CHAPTER I

INTRODUCTION

1. INTRODUCTORY

Sources, Methods, and Objectives

THE Nuer are a Nilotic people who live in the savannah and swamps of the Upper Nile Province in the Anglo-Egyptian Sudan. My acquaintance with them began in 1942 when I was appointed Assistant District Commissioner of the then Zeraf District which included three of their tribes. In 1943 a special body known as the Nuer District Commissioners' Meeting, and now called the 'Nuer Chiefs' Council', was set up by the Governor of the Province. The object was to enable administrators and chiefs, chosen from all Nuer Districts to represent their people, to discuss common interests, and ensure some consistency in administrative policy. One of the main subjects for discussion was the growing body of 'customary law' administered in Nuer tribunals established by the Government, and the obvious need for standardization of the general principles, although it was agreed that any form of rigid codification should be avoided. One of the first resolutions passed at this first meeting was that an investigation should be made of the principles of Nuer customary law and a record kept. This Manual of Nuer Law springs from that resolution. I was able to study and record the cases which appeared before the courts throughout my service in the Zeraf District, and later, when the Lou Nuer tribe was incorporated to form what is now called Central Nuer District, to extend my enquiries further afield. Subsequently I had occasional opportunities of visiting other Nuer Districts and, although I was not then dealing with administrative affairs, I was able to check some of the information previously recorded. This Manual is, however, largely based on information from the Lak, Thiang, Gawaar and Lou tribes, and it must be appreciated that I have not been able to cover all the detailed variations of customary law which are to be found in so large an area. It would be a mistake to believe that every Nuer court would give judgement always and exactly according to the law I have described, even though there is great consistency in general principles—a consistency which is fortified by decisions made subsequently at meetings of the Nuer Council.

By 'customary law' I mean the body of 'native law and custom' which is administered in Nuer courts under the Chiefs' Courts

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8:Howell E, G-5 (1942-1944)1954
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671 Ordinance of 1931.[1] Such terms appear frequently in the official records of Colonial Governments and in the Anglo-Egyptian Sudan, but they are something of an anomaly if any strict definition of the word 'law' is applied. I shall turn to this question of definition and the nature of Nuer law later. Here such terms are sufficient to indicate generally those customary rules governing human relationships which, among the Nuer, were in the past subject to sanctions too indeterminate to be called legal, but which are now applied with a consistency and organized force sufficient to justify the use of the word 'law' in a more exact sense.

692 177 Nuer courts are an innovation. Though there may have been irregular meetings of elders and ritual functionaries to decide matters of local concern, there was no organized political body which could enforce its decisions, even though other sanctions were sometimes strong enough to ensure conformity. Since public security was the primary aim of Government in the early years of the administration of Nuerland and breaches of security usually arose from disputes over matters which to us may appear comparatively trivial, the establishment of such tribunals was the first and perhaps most important move in the development of the Nuer towards management of their own affairs. It was certainly one which brought about the most profound changes, as will be seen later. In those early years most of the decisions were made by the District Commissioner himself, often with curious subsequent results, even though consultation with Nuer representatives was always an important feature of the procedure.

Now that these courts are rapidly developing in most Nuer areas and there are already the beginnings of a proper separation of the judiciary from the executive, the District Commissioner is called upon less frequently for personal arbitration in matters which should be settled with full reference to traditional rules and established precedents. 692 177 123 From the time when I first visited Nuerland it was the agreed policy of the Government to interfere less and less in such matters, for not only was it the ultimate object of such courts to provide an indigenous mechanism whereby civil disputes might be settled amicably, but it was realized that the alien administrator can never achieve sufficient knowledge of the complexities of Nuer law to settle such disputes himself. Even if he succeeds in abandoning the conventions which spring from his own environment, he cannot see such cases from the same viewpoint as the Nuer. His only advantage is impartiality which alone is insufficient to justify interference. Criminal law is a different matter, for the concept of punishment was previously unknown to the Nuer, but even in this they must be made to settle

[1] '7 (1). A Chief's Court shall administer—
(a) the native law and custom prevailing in the area over which the Court exercises its jurisdiction, provided that such native law and custom is not contrary to justice, morality or order.' Extract from Chiefs' Courts Ordinance, 1931.

8:Howell E, G-5 (1942-1944)1954
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619 621 occupying exclusively a common territory. Thus the genealogical system runs right through the structure of the tribe and gives it a form which can be visualized by the Nuer in kinship terms. Each individual knows his position in that structure and therefore his relation to other persons in the tribe by reference to the segmentations of the clan which run through it.

I do not propose to digress further on the nature of Nuer society, but must emphasize its structural form and relativity. Further, it is important to note that tribes and segments of tribes exist largely in opposition to each other, a condition which Professor Evans-Pritchard describes as the 'balanced opposition of groups'. Both these conditions, structural relativity and balanced opposition, are of profound importance in a study of customary law, since the sanctions for conformity are relative in strength according to the position in society of the individuals or groups concerned, and 'balanced opposition' is an especially important feature in the institution of the feud and the way in which feuds are composed. I shall therefore refer to these features of Nuer society later.

Custom or Law and the Sanctions for Conformity

● 671 The Nuer had no regular institutions for the enforcement of customary law in the past. Social control was not maintained through the systematic application of 'the force of politically organized society',[1] for there is no evidence that anything of such a developed and formalized nature existed. On this strict definition, then, the Nuer had no 'law', but it is clear that in a less exact sense they were not lawless. There were recognized standards for the control of human relationships even though these were maintained by sanctions too indeterminate to be called legal. As will be seen later, a very large and growing body of what should be called 'custom' when we refer to the past is now consistently administered in the tribunals established by the Government and hence is enforceable law in a more precise sense. It is not possible, however, to qualify every statement in reference to the past or the present, so that the term 'law' is used rather loosely in the text which follows.

577 602 A Nuer thinks in terms of rights which he calls *ciong* and of wrongs which he calls *duer*. *Duer* in this sense means the failure to recognize a right or the infringement of a right. The Nuer has, by reason of his membership of a kinship group, both rights and obligations. A wrong, *duer*, therefore has two meanings. In the first place it is a wrong when a man actively violates the right of another. It is also a wrong when a man refuses to honour his obligations towards his kinsmen.

010 Given that there were rules of conduct, expressed in the terms

[1] Roscoe Pound, *An Introduction to the Philosophy of Law*.

8:Howell E, G-5 (1942-1944)1954
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The significance of the 'structural relativity' of Nuer society is therefore most important in a study of customary law, for although the rules and principles which govern the conduct of all Nuer are essentially the same, the extent of their application is relative and largely dependent on the social context. This is best illustrated by use of an example. It is a legal wrong to commit adultery with another man's wife. It is a wrong which, if social relations are to continue between the two parties and the possibility of retaliation on the part of the wronged husband is to be removed, will require the payment of cattle as an indemnity. In the first place, the likelihood of the wrongdoer paying the cattle at all is determined by the relationship of the parties, both in terms of actual kinship and in terms of territorial proximity, in residence and all the sanctions which go with common residence. It will not be paid if there is no pressure on the part of the community in which they live, and there will be pressure in proportion to the extent to which the men's mutual animosity disturbs the tranquillity of that community; generally speaking, the greater the structural distance between them, the less the likelihood of composition. But in another aspect of the law concerning adultery the reverse is found. If we analyse the concepts behind the payment of the indemnity, we find that, of the six cattle required, one has purely ritual significance. It is a cow called *yang kuie* ('the cow of the sleeping mat'), the payment of which is demanded as expiation for the spiritual pollution which is caused by adultery, rather than as an indemnity required to appease the indignation of the husband. In disputes over acts of adultery which arise between men who are close kinsmen it is rare that anything more than this one cow will be demanded, for not only is the moral indignation much less, but the group of which they are part is sufficiently well-knit to resist the disturbance caused within it. Not only is the wrong a lesser one because the wronged person has other associations with the wrongdoer which mitigate the offence,[1] but social equilibrium has not been disturbed to a degree which other sanctions making for good relations cannot rectify. Thus we see that the closer the structural relationship of the parties involved, the more likely is the wrong to be rectified, but the smaller is the indemnification required to do so. Conversely, the more remote the relationship the greater the indemnification necessary but the smaller the likelihood that the wrong will be rectified at all. This is a principle which applies to all wrongs which require

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[1] There is another method of analysis which expresses the same idea. It is that in the payment of indemnification in cattle between two persons closely related the limitation of rights in cattle must be considered. An individual has rights in cattle limited by mutual obligations which apply to him as member of a kinship group. If the wrongdoer is a kinsman of the wronged he has limited rights in the cattle of the wronged, and the closer the relationship, the greater the rights. Hence the recipient of the cattle is also a person upon whom may lie the obligation to assist in the payment. This principle is more clearly illustrated in payment of compensation for homicide, and will be discussed more fully later.

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indemnification,[1] but is nowadays modified by the fact of enforcement of the law through the agency of Nuer courts.

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Restitutive Sanctions

Rules of conduct towards kinsmen and neighbours are upheld by these sanctions. If good relations are to continue, certain breaches of conduct usually require the payment of compensation. Adultery, as we have seen, requires six head of cattle for this purpose; bodily injuries require compensation in proportion to the seriousness of the injury and there are complicated scales laid down in tradition. Homicide requires the transference of forty head of cattle from the kinsmen of the killer to those of the deceased in order to restore the balance between them. Scales of compensation for wrongs can be quoted by the older generation of Nuer with surprising consistency, but this is an indication neither of rigidity of custom nor of constant application. Whether compensation was paid at all and, if paid, whether the scales were strictly followed, depended largely on the relationship of the persons involved. If a dispute arose between groups of people after a wrong had been inflicted on one of them, we have seen that their relationship in the social structure determined the likelihood of settlement. The sanctions for composition operated along lines of social cleavage, being less intense and therefore less effective the greater the structural distance. A man of one tribe could rarely hope to exact compensation for an injury inflicted by someone of another tribe unless there were other links between them which extended beyond the political limits of the tribe. Similarly an individual living within one primary segment would find it difficult to get compensation from an individual living in another primary segment unless there were other ties between them, usually kinship or marital ties, which made composition mutually advantageous. It also depended on the state of the relations obtaining between the two segments, for there was often a feud (*tar*) between them. These observations are less true of members of secondary segments, since the smaller the social sphere the greater the possibility that compensation would be paid, and would be also a matter of extreme expediency. The application of Nuer law was therefore relative to the social structure, and the extent to which it was followed depended on current relations of the social units concerned. It was unlikely that minor disputes involving the payment of compensation to wronged individuals would ever be settled so long as the communities with whom each was associated remained in a state of feud. The situation would be substantially altered if the feud itself was composed by payment of compensation (*thang*) between them. Composition of a feud was

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[1] Homicide and bodily injury, defamation of character, infringement of rights in property, violations of rights in women, &c.

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showed little sign of improvement. The decision continued to lie with the District Commissioner, and there was a tendency to avoid any legal procedure in order to approach him direct; for this was the surest and speediest way to get justice, whether it was justice according to the principles of Nuer law or not. 692

This tendency was formally recognized as retrogressive in 1942, and administrative policy was changed accordingly. Thereafter the policy has been for the District Commissioner to divorce himself as far as possible from any real participation in the administration of tribal law. Further, there is now a more formalized system of appeal courts in which the judgement of a local court, based on a tribal section, can be tested in an appeal court consisting of members from other localities less likely to be biased by local considerations. In these the District Commissioner still acts as clerk to the court, for the Nuer still demand at least the presence of the District Commissioner, who remains a symbol of impartiality and whose presence may be a guarantee for prompt execution.

Courts and Tribal Structure

Although the general policy of the Sudan Government is to build up a system of courts based on territorial groupings rather than on kinship and tribal affiliation, Nuer courts in fact still closely correspond to the traditional divisions of tribal structure. Despite minor modifications, the court system throughout Nuerland is still largely tribal in basis.

Similarly, the court members are representatives of tribal segments. The *kuaar lowa* represent primary or secondary segments according to the circumstances. The Awoi court, for example, has six *kuaar lowa*, each representing one of the six secondary segments of the Bar primary segment of Gaawar. The Jagei (area) court has one chief for each of the four primary segments of the Jagei tribe. A section chief, a *kuaar lowa*, represents a secondary segment, and under him are a number of headmen, *gaat tutel*, who represent tertiary segments or lineages, of which there are a great number.

The way in which these courts operate, the legal procedures followed, and the effect that the very existence of such courts has had on Nuer society in general is discussed more fully in later chapters. It is now necessary to examine the principles of the law administered in these courts. The legality of social institutions and relationships is maintained by the system of cattle exchange between one individual and another or between one group and another. In marital relationships, for example, the transfer of bridewealth cattle is the material symbol of the transfer of rights which in their turn create reciprocal rights. The transfer of cattle is the means by which equilibrium is maintained. 691

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671 [68] It is also the means by which any disturbance of equilibrium is set right. For this reason most legal disputes concern claims for cattle as indemnities for recognized wrongs—homicide, bodily injuries, defamation of character, adultery, and seduction. Otherwise they concern claims for cattle as part of a system of rights accorded to the individual as a member of a kinship group or acquired by marriage. It is these wrongs and indemnities, these rights and claims, which we must now examine in detail.

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the collection of bridewealth, bloodwealth or other kinship obligations automatically come into operation. The fear of punishment is therefore a collective deterrent, and this, with the general realisation that payment of compensation will invariably be enforced, has undoubtedly reduced the incidence of homicide. It has also to some extent had the effect of strengthening public opinion opposed to the use of violence, and people are likely to go to greater lengths to restrain their fellows. Conversely, the certainty of punishment and of the enforced payment of compensation has lessened the fear of retaliation and has resulted in a corresponding reduction in the force of those sanctions which make for the fulfilment of social obligations.

Although the concept of punishment inflicted by the State is alien to the Nuer, its introduction has not been difficult, and the deterrent effects are appreciated by chiefs and court members. In general terms, however, a European system of criminal justice is not always understood. Fratricide, for example, is considered a great wrong, and is one which is likely to shock Nuer deeply, but it does not demand any restitution or compensation. A man who kills his brother is injuring himself, and although this may demand a readjustment in matters of inheritance, he cannot pay compensation to himself. Moreover his action runs counter to the very basis of Nuer social sentiment and conflicts with their ideas of kinship solidarity. It is an act almost on a par with suicide, which is fraught with spiritual dangers to the surviving kinsmen. Fratricide is the negation of all social principles. The killer will have to undergo a complex process of ritual purification to appease the wrath of the ancestral spirits and to avoid the misfortunes which may follow, but he will not pay compensation to himself or his brothers. Similarly when a man kills his legally married wife he is causing an injury to himself, for he has paid cattle for her which will now never be returned. Again he will have to undergo ritual purification, will have to give a few cattle or other gifts to his relatives-in-law, but unless he has not completed the bridewealth payments, he will not have to pay compensation in the normal sense. In such circumstances the Nuer find the greatest difficulty in understanding why the Government should seek to punish the culprit, and a Nuer court will usually resist an attempt to do so. If the case is taken out of their hands by the formation of a Major Court under the Presidency of a District Commissioner or Judge, there is little comment and they will accept the sentence, but it would be difficult to persuade a Nuer court to pass sentence itself.

Apart from the difficulties of understanding an alien system of justice, there are other factors which have had repercussions on the application of traditional Nuer law and in particular on the scales of compensation demanded for a wrong. It seems probable that with the absorption of Dinka elements and natural increase, human population

8:Howell E, G-5 (1942-1944)1954
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is now much greater in relation to cattle than it was in the past. In addition, diseases have taken a heavy toll and the Nuer are unable to replenish their stock by raiding other tribes. As a result, bridewealth has decreased substantially, and Nuer have at one time or another felt that bloodwealth should be decreased in proportion. In most Nuer districts this has found its own level. In three of the then four Nuer districts the indemnity for homicide was reduced to only twenty head of cattle. This did not occur in Western Nuer District, where compensation remained at 40 head of cattle, but whether this was due to purely economic causes is not easy to discover. The Western Nuer have always had a reputation for being rich in cattle as compared to other Nuer tribes, though this is not entirely borne out by recent statistics. These changes have again been altered by recent legislation.

Recent Legislation Concerning Homicide

At the Nuer Council meeting in 1945 it was generally agreed that compensation for homicide should be raised once more in those districts where it had been reduced, and should be standardized at 50 head of cattle, of which 10 should go to the Government as a fine. In the absence of a sufficiently strong body of public opinion opposed to violence and the taking of life it was felt that this action might serve as a greater deterrent among the Nuer. More remotely related persons would be called upon to subscribe and, since payment of compensation is now rigidly enforced, there would be greater efforts by the people to settle their disputes without resort to force. It must be stressed here that this argument, though put forward by the Administration, was fully understood and appreciated by the Nuer chiefs present at the meeting, and the majority voted for the increase in the indemnity. Yet the argument is itself a doubtful one. In Western Nuer District, where compensation was never reduced, fighting and bloodshed were more common and widespread than in other Nuer districts.

The increase of compensation may have widespread repercussions in other spheres. Captain H. A. Romilly, District Commissioner of Eastern Nuer District, writes:

> One of the main decisions reached at the Pangak Meeting of 1945 has been to standardize blood-money at 50 head of cattle and to adjust other compensations accordingly. In Eastern Jikany this has had two main results:
>
> (a) First it has put up bride-price, and a marriageable girl has even less say than before in whom she marries. The heads of families and chiefs are responsible for debts being paid off, so the girl is sold off to the highest bidder, regardless of her feelings. This naturally results in more elopements, adultery, and divorces and consequently an increase in litigation.
>
> (b) The second result of the increase in blood-money is the reluctance of the chiefs to break *nuer* which is a system by which relations exchange cattle

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on the marriage of their female relatives. Previously, if relationship was distant, the chiefs would agree to no cattle passing and the 'breaking' of *nuer*, but since the Fangak mounting chiefs are very reluctant to break *nuer* as the more so-called relations there are available to collect blood-money, the better.[1]

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In connection with the first repercussion mentioned by Captain Romilly, it would appear that the object of this legislation has been defeated. Not only is litigation increased in the courts, but the result has been an increase in the very kind of dispute—elopement, adultery, divorce, &c.—which is so often the cause of violence and bloodshed.

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The second result noted by Captain Romilly among the Eastern Jikany Nuer is not necessarily a social evil, as he seems to suggest, and indeed was one of the intentions of the action taken in raising the rates of compensation. We have seen that the social structure of the Nuer has been subjected to severe strains, and since social groups in the past were at least partially maintained as co-operative units by the retaliatory sanction and the need for mutual protection, a reduction in the incidence of violence and of blood-feuds has naturally tended to reduce group solidarity. The lessening of the retaliatory sanction has led to an excessive process of fission without the accompanying process of fusion. Unless this process is checked, or at any rate the speed of the process lessened, there is a tendency towards social decay and even chaos before a new form of social organization based on territorial factors and local government can be substituted. Captain Romilly of course refers to the consequent increase in litigation in the already overburdened courts because the extension of the widest range in *nuer*, 'kinship', means a larger circle of people involved in relationships which demand mutual assistance and therefore an increased number of claims in a cattle exchange system.

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The Nuer courts which have been established by the Government are a form of machinery through which the social system is maintained. As I have explained previously, this has introduced a political authority upholding the customs of a social system, and custom therefore becomes law in a more precise definition of the term. Customary payments of compensation for wrongs (*dwar*), normally only likely to be effective because of the fear of condemnation by a restricted community sentiment and a consequent loss of privilege and security, are now enforced as law. Cases are raised in the courts which would never have had the slightest chance of success in the past, and judgements are enforced because a too literal application of the traditional principles is made. A typical example of this is *ayiedliet*. It seems likely that in the past *thang ayiedliet* was only demanded in cases where the persons concerned were very closely related and then on a much reduced scale.

[1] Unpublished administrative records (Eastern Nuer District), 1946.

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probably as a token payment. I have not been able to find evidence of *thang nyindiet* being paid in pre-government times. Yet, until it was abolished in 1945, the demand for *thang nyindiet* was frequent, and although the claims were sometimes carried to extremes of fantasy, they were also frequently enforced. For example, the family of an old headman, Loiny Kur, who must have been over seventy and scarcely able to walk for several years before he died, at once claimed compensation for his death, which, they claimed, was due to a blow on the head. Further investigation revealed that this blow, which caused him considerable discomfort at the time, but no more, was delivered about forty years before his death.

At the meeting of 1945 it was agreed to abolish claims for *thang nyindiet*, but over this a further difficulty arose, because there is no clear distinction between what would be called *thang ran*—compensation for direct killing—and *thang nyindiet*. A man may linger on in a disabled condition as a result of a blow for years before dying. In this case, if compensation for an injury has been paid, the cattle and their offspring will be assessed as part of the claim for bloodwealth, for this is one of the objects of compensation for hurt; but there are some injuries which do not in Nuer custom demand any compensation at all, notably blows on the head. The final ruling given by Chiefs at the 1945 meeting was as follows:

> *Nyindiet* is abolished. Only compensation for a man who dies as a direct result of a wound may be claimed and then full compensation will be paid. The test is this: if a man, as a result of a wound, is confined to his house and is unable to take part in the normal economic activities of the Nuer and finally dies after a period of years, then full compensation will be claimed. If he recovers, then if compensation for an injury is applicable according to Nuer laws it should be paid.[1]

This has subsequently led to much confusion, though the meeting of 1947 recorded that 'a series of test cases with the chiefs of Eastern Nuer straightened out their ideas.' This is an instance in Nuer law in which the circumstances of the case, as deduced from formally recorded evidence, must be the guiding factor and, as medical facilities increase, medical evidence also. In normal homicide cases brought before Nuer courts, the facts are not generally in dispute or concealed by the defendant party.

Recent legislation (in 1947) by the Nuer Chiefs' Council has also abolished the payment of *ghok paide loic*, mainly because in some parts of Nuerland there was an endless demand for such compensation as final payment for cases settled years ago. The idea exists in tradition, but was clearly of very rare application. As we have already seen, *thang yiithe* has also been abolished.

[1] Minutes of the Nuer Chiefs' Meeting, Pangak, 1945 (unpublished).

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CHAPTER VII

THE NATURE OF NUER LAW

Private Law and Public Law

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WHEN speaking of Nuer systems of social control in the past we should not be justified in making a distinction between criminal and civil law, though we might, in some instances, be justified in doing so now. Such a distinction is based on the conventions of legal principles inherent in our own culture, and these are not applicable. We can, instead, as recommended by Professor Radcliffe-Brown, distinguish between 'the law of public delicts and the law of private delicts'. He points out that—

> In any society a deed is a public delict if its occurrence normally leads to an organized and regular procedure by the whole community or by the constituted representatives of social authority which results in the fixing of responsibility upon some person within the community and the infliction, by the community or by its representatives, of some hurt or punishment upon the responsible person. This procedure, which may be called the penal sanction, is in its basic form a reaction by the community against an action of one of its members which offends some strong and definite moral sentiment and thus produces a condition of social dysphoria. The immediate function of the reaction is to give expression to a collective feeling of moral indignation and so to restore the social euphoria. The ultimate function is to maintain the moral sentiment in question at the requisite degree of strength in the individuals who constitute the community.[1]

It is worth while examining this statement in the light of what has emerged in the preceding chapters. Our first difficulty among the Nuer is, of course, to define a community. Nuer society is segmentary, and therefore a group of persons or a segment of a tribe may have political significance at one moment, and at another moment no significance at all. This difficulty is accentuated by the process of fission and fusion described by Professor Evans-Pritchard.[2] A tertiary segment of a tribe has, in this sense, a more constant political existence, and a localized lineage even more so, than a secondary segment or larger unit until we reach the tribe which is, or was, the limit of political unity. The fact that political co-ordinations, especially in matters of law, now extends beyond tribal boundaries, because the Government provides the link, in no way alters this argument, for we are still considering the past. Even with this qualification, however, and with full realization that the sanctions for conformity have a variable social range and that a

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[1] *Encyclopaedia of Social Sciences*, New York, 1930.
[2] Evans-Pritchard, *The Nuer*, p. 148.

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621 671 community among the Nuer is relative, like the Nuer word *cieng*, which roughly describes a territorial and social unit whatever the size,[1] we can still safely say that there was little or no public law among the Nuer in the past.

681 621 The sanction, even for the most serious of offences, homicide, was retaliatory, requiring only an act of vengeance against the killer or any one of his kinsmen, and thereby maintaining the balance and satisfying the indignation of the kinsmen of the deceased. Alternatively restitution might be made, the payment of which fell not individually on the killer but again on all his kinsmen and which, though primarily directed to providing the dead man with a wife, thus to raise children and restore the balance, was in part divided among the dead man's kinsmen. This division, which still applies today, is itself of particular significance for it shows that the cattle paid as 'blood-money' are in no sense merely a punishment or punitive damages inflicted on the group of the killer, but are primarily directed to the restoration of the balance between them and the group of the deceased. [783] This balance is disturbed by the act of homicide, and the two groups or segments of a tribe are at once in a state of feud (*tar*) and will suffer spiritual pollution if the ordinary contacts of daily life continue between them. They are the *ji ran*, the 'people of the (dead) man', and the *ji thaagɛ*, 'the people of the compensation', and between people in this condition social intercourse is not only unsafe, because at any time an act of vengeance may happen, but also spiritually dangerous. There is therefore a disturbance of equilibrium, which finds expression, on the one hand, in the feeling of intense indignation—often, as we have seen, more conventional than actual—of the dead man's kin and, on the other, in the fear on the part of the killer's kinsmen that violent retaliation may follow. Between them there is the fear of mutual contamination.[2] The balance is restored by the performance of ritual, the purpose of which is to remove the danger of this spiritual contamination, and by the complicated processes of payment of 'blood-money', the main object of which is to remove the feeling of indignation of the *ji ran* by giving them compensation in cattle for their loss. That this loss extends to a group larger than the immediate family of the dead man is seen in the fact that a small portion of the compensation is paid to his maternal relatives, the distribution following a pattern which is similar, though much restricted, to the distribution of bridewealth. The majority of the cattle go to provide a 'ghost-wife' for the dead man, thus assuring the continuance of his line in the lineage structure and also the unimpaired continuance of that lineage as a whole. There is nothing in these processes which

[1] The Nuer *cieng* has already been discussed, see pp. 10–22.

[2] It may be argued that the fear of contamination and the consequent avoidance are only a psychological expression of the fear of retaliation.

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there is no documented evidence, and we are again approaching a subject which is a matter of conjecture. It may be presumed, however, that violence probably resulting in death was sometimes used against persons who had acquired such an evil reputation that their continued existence in the community became intolerable. Nuer tell us that in the case of ghouls (*rodk*) no indemnity would be demanded by the dead man's kinsmen, and only a much reduced indemnity in the case of possessors of the evil eye (*path*), and sometimes magicians (usually *tiet*) who were alleged to have used their powers for strictly anti-social purposes. This does not necessarily suggest that anything in the nature of organized or concerted action was taken but that the act of revenge on the person of a witch by an individual, or a few individuals who supported him, was condoned by public opinion to such an extent that the kinsmen of the deceased dared not retaliate, or perhaps themselves condoned the act, considering themselves well rid of a dangerous factor within their own lineage. At any rate a blood-feud was unlikely to follow, and although vague statements of this kind must be substantiated by actual examples[1] before any definite conclusion may be drawn, we might be justified in saying that here at least is the germ of public law.

Trends and Changing Conditions: the Transformation of Custom into Law

We have seen in the introduction and throughout the descriptive passages of this book that among the Nuer there are recognized rules of conduct which find expression in the terms *cuong*, 'right', and *duer*, 'wrong'. These concern the relations of one Nuer with another and, since the individual cannot be considered in isolation, one group with another. The distinction between custom and law has also been mentioned. The term 'law' is sometimes used of all processes of social control, and by this definition any of the obligations, customary actions, and conventions inherent in the social system might be described as law. It is less confusing to adopt the hypothesis that the extent of the law is limited to social control which is maintained by organized legal sanctions and applied by some form of organized political mechanism. By this definition, the Nuer had no law, for, as we have already seen, there was in the past nothing in the nature of politically organized society. There were in a sense courts of arbitration dependent on the person of the Leopard-Skin Chief, but resort to this functionary only occurred if both parties were willing or found it expedient to do so, and there was certainly no means through which a judgement could be enforced even if it was given.

On this subject, Professor Evans-Pritchard has written:

[1] It is perhaps now too late to collect reliable evidence on this subject.

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In a strict sense Nuer have no law. There are conventional compensations for damage, adultery, loss of limb, and so forth, but there is no authority with power to adjudicate on such matters or to enforce a verdict.[1]

When this statement is applied to the past, no criticism can be made. So far as it is now possible to discover what happened in those days, we may safely say that arbitration only occurred when it was expedient for both parties to submit to it. We may also conclude that the conventional compensations referred to were in the nature of a formula for compromise. A start in the negotiations had to be made with reference to some scale, especially when the disputants were under the stress of heated emotions, but although such scales have a traditional consistency, there was no constancy or rigidity of application. Finally we may say that there was no mechanism for enforcement should either party refuse to continue negotiations at any stage of the proceedings.

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Professor Evans-Pritchard goes on to say:

> The recent introduction of Government courts, before which disputes are now sometimes settled, in no way weakens this impression, because we well know how among other African peoples cases are brought before courts under Government supervision which would not previously have been settled in a court, or even settled at all, and how for a long time after the institution of such Government tribunals they operate side by side with the old methods of justice.[2]

This was written of the Lou Nuer as they were some twenty years ago, and the rapidity with which Government tribunals have developed since then is considerable. If it is argued that these tribunals are now applying the law beyond the limits of reality in the past, this statement is entirely true. If it is argued that the courts are administering a system of law which has no foundation in tradition at all, the statement is less true, though it is manifest that there are many innovations which are the result of an evolution of case law based on precedents, some of which are the natural development of Nuer ideas, some of which are due to the direct intervention of the Government. Rules of behaviour administered in the courts are none the less law, provided they are administered consistently on recognized principles and are enforced.

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We have considered almost all those aspects of Nuer life which are subjects of discussion and dispute in the courts today: homicide and bodily injury; marital relationships, rights, and obligations; divorce and dissolution of marriages; the legitimacy of children; violation of rights in women; the infringement of grazing and fishing rights; theft and the misappropriation of property; witchcraft and other nefarious practices. In the past the sanctions for conformity with rules of conduct and for the composition of wrongs, if a breach of those rules

[1] Evans-Pritchard, *The Nuer*, p. 180. [2] Ibid.

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occurred, were forceful retaliation or self-help; social reprobation within the community and unpopularity, loss of prestige and privilege, and so on. The force of these sanctions was neither constant nor continuous, but they were certainly effective in some instances. The sanctions were variable and their effect was relative to the position in the social structure and the actual daily proximity of the persons concerned, and depended also on the political relations prevailing between the tribal segments to which they belonged. Nowadays these matters are to a greater or lesser degree brought before the courts and a settlement is enforced. Customary procedure has become law in the more precise definition.

This may be attested by reference to the examples already recorded in detail. It is, for instance, customary, on the death of a wife who has not fulfilled the required procreative obligations, for the bridewealth cattle to be returned to her husband, thus dissolving the union, though the wife's family may usually claim certain deductions. The Nuer regard this procedure as logical and correct, though it is doubtful whether it was followed in the past, especially as the dissolution of marriages appears to have been less frequent or even impossible after some years of marriage had elapsed. If the marriage is not dissolved, either because the husband does not wish it or because the wife has already borne sufficient children to stabilise the union for all time, her family may be expected to assist the widower by payment of certain cattle (*ghak tuake*), which will be used to feed the children or to enable him to marry again so that 'there may be a mother in the home'. This may be regarded as a matter of custom, for in the past the payment doubtless depended on the terms on which the husband and his dead wife's family continued to live. This is also true today and most situations of this sort call for no dispute. If this custom becomes a subject for litigation and appears before a court, payment may be enforced. The court will begin by saying to the wife's family that it is customary to give *ghak tuake* in such circumstances and that the husband is in the right: *tabe cuang*, 'he has a right'. They are taking as a criterion what a reasonable Nuer may be expected to do in similar circumstances, and will call upon the wife's family to conform to that criterion, but, after persuasion, they will in the final event enforce this decision with the threat of punishment if it is not followed. To quote another example: in marriage, it is customary for the bride's father's age-mate to receive a cow called *yang ric*. The special relationship between the bride's father and his age-mate, and symbolically the intimate association of all age-mates, is thus socially recognized. If questioned the Nuer would undoubtedly say that the age-mate has a right (*cuang*) to this cow. Further, there are three different sets of people involved in this transaction. In the first place the bride's family are concerned with

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671 583 the bridegroom. The question arises whether or not he will meet this particular claim. If pressed he will probably do so because the bride's family might terminate the negotiations, though this is unlikely to happen over so remote a claim as the cow of the age-mate. In the second place the bride's father is concerned with his age-mate, and here there is an element of reciprocal exchange.[1] A cow is not given to all age-mates of the bride's father, only to one who has a particularly close connexion with him and has probably undergone with him the ritual processes of initiation which impart a mystical association analogous to kinship. We see therefore that the custom is a complicated one involving two separate transactions and subject to different sanctions. If a dispute over this payment reached a Nuer court, payment would in most instances be enforced. When there are sufficient precedents to constitute a consistent application of a custom of this sort, we should be justified in speaking of the claim as a legal and enforceable right.

671 791 Again, certain categories of magical experts are entitled to a fee for their services. Such claims often appear before the courts. The court will consider the circumstances, estimate whether the alleged benefits have been received or not, and if necessary order the client to pay the fee. The transaction is in the nature of a contract which is now enforceable in law. In the past the sanctions were retaliatory, though in this particular instance forceful retaliation would be unlikely since more commonly the magician's supernatural powers, which might be used against his client, would be feared.

671 673 Compensation for wrongs, recognized in tradition, expressed in traditional scales, and originally a basis for compromise, is now enforced in the Courts. Adultery, for example, is a recognized wrong and one which should be rectified by the payment of a suitable indemnity. Whether or not this was paid in the past depended again on the sanctions prevailing, but nowadays the wrongdoer will in the final event be compelled to pay. This applies to other legal wrongs, such as the seduction or impregnation of unmarried girls, and theft or damage of property.

671 177 Among the Nuer there is a vast field of custom and convention which is now supported by legal sanctions and thus becomes the law. Moreover this transformation of custom into law is being carried to extremes among the Nuer, for there is an increasing tendency to treat all social customs and conventions as enforceable laws.

Throughout this discussion of Nuer customary law we have sometimes been speaking of the present, sometimes of the past. Under the influence of modern administration systems of social control are

[1] The age-mate will receive the cow if the bride's father has received a like privilege on the marriage of the age-mate's daughter or has the expectation of doing so. See p. 110 and n. 3.

8:Howell E, G-1 (1942-1944)1954
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changing very rapidly, so that this distinction in time is clearly essential. We have seen that most social obligations and systems of social control were maintained in the past by sanctions which made conformity essential or at least expedient. Such sanctions were operative upon individuals or groups and their force was variable according to the position in the social structure of the parties concerned. Theoretically at least, the law was the same but its application was relative. For the most part the establishment of Nuer tribunals, with the threat of force behind them, has provided a substitute for other means by which the political balance was maintained.

In the initial stages of administration the policy was to intervene only in those affairs which constituted a breach of the peace: affray, continued blood-feuds, or individual fights. This action was to modify or even remove the retaliatory sanction. The next stage was to intervene in matters which were likely to lead to a breach of the peace, and to see that disputes were peaceably settled. Both actions took the form of direct intervention by the District Commissioner, his decisions being enforced, so far as was then possible, by State police. The next stage was the appointment of tribal agents. This led to the establishment of Nuer courts whose authority was backed in the first instance by the tribal retainers or 'Chiefs' police', some of whom were armed with an outmoded pattern of rifle, but was upheld in the final instance by the District Commissioner. Since then Nuer courts have gradually developed in efficiency, power, and formality of procedure, until in some areas they may be said to compare favourably with similar courts in the more developed parts of the Northern Sudan.

This raises another important point which is relevant to a study of Nuer law. The courts are not equally effective or efficient in all parts of Nuerland. The extent to which past sanctions have already changed, and the rapidity with which they are changing now, are therefore not constant. For example, the difference between such tribes as the Lak and the Nuong is considerable. The Lak of Central Nuer District, whose country is close to the administrative headquarters of the province and the district centre at Fangak, who are easily accessible at all times of the year, and whose permanent settlements are concentrated, have been closely administered for the past twenty years or more. The courts have reached, comparatively speaking, a high level of efficiency, and a man can usually obtain redress for wrongs committed against him. The Nuong, whose country lies in the southern extremity of Western Nuer District, which as a whole has perhaps been less closely administered than Central Nuer District, are not easily accessible at any time of the year. There are no roads leading to their permanent settlements and only one moderately easy approach to their country by river. At most they have received the personal attention of a District Commissioner for a few weeks each year. The courts,

8:Howell E, G-5 (1942-1944)1954
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in such matters is not always consistent and certainly not equally effective. Moreover there is still everywhere a reluctance to give anything in the nature of a judgement. In many disputes, where the rights of one or other of the disputants are abundantly clear, a rapid and clear-cut decision might be expected. This is rarely forthcoming. Argument swings from one side to another during the course of the proceedings until agreement is reached. When a compromise is not reached to the satisfaction of both complainant and defendant, although the decision is recorded in the court registers, execution is often avoided even though the guilty party is well able to pay the cattle demanded. More often still an appeal is lodged. A dispute frequently passes through all possible stages of litigation; from preliminary negotiations, in which the elders of the community may be consulted, to appearance before the tribal court, to appeal court.[1] Even then there are many instances where attempts are made to bring the same case again and again. This lack of finality is a distinct characteristic of Nuer litigation.

Nevertheless, the general and most obvious effect of administration in the form and application of what we may now call Nuer law is, as already stated, on its relativity. Here we must make a further distinction, because Nuer courts are in fact operating in two different ways. In the first place they are upholding a network of positive obligations inherent in the social system, and in this sense they are becoming more and more the sole mechanism through which the social system is maintained. In the second place they are the means through which definite legal wrongs are righted. A man who does not fulfil a particular duty towards a kinsman may now be brought before the courts in just the same way as one who has infringed a specific right. More and more of what can only be described as custom, convention, or even usage finds its way into the arena of the courts and is applied as law. Evidence of this may be seen in the growing amount of litigation which appears before the courts. The Nuer are pressing, through this means, claims for the fulfilment of obligations which were not in the past normally subjects of dispute at all. There is another reason for this increase in litigation. Paradoxically enough, although there is now greater certainty of obtaining redress through the agency of the courts, the sanctions which in the past made for greater conformity with accepted patterns of behaviour, have themselves been modified by the very existence of the court system, which aims at the maintenance of public security. These sanctions, as we have seen, were principally retaliatory. For example, a man may nowadays commit adultery with another man's wife with the knowledge that he will at least escape death or severe injury at the hands of her husband, even though he knows that detection will almost

[1] Branch and Main Courts. See Appendix II.

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621 178 692 disputes are confined to tertiary or lesser segments within it. A man of *cieng* Bedit (a secondary segment) will receive the backing of court members who represent *cieng* Bedit when arguing a case against a man of *cieng* Jiagh (another secondary segment), and the decision reached is in the form of a compromise between them. Even though judgement is given, it will depend on the spirit of compromise between those segments whether the chiefs will see to it that the judgement is promptly executed. There is also present a neutral body represented by the chiefs of other segments who, with the segments concerned, make up the sum total of the people over whom the court has jurisdiction. These will tend to act as arbitrators, while those who represent the segments to which the disputants belong are really acting as advocates rather than judges, but it will be the latter upon whom the responsibility of execution will fall. This is how a Nuer court functions, and if there is a joint meeting between the whole of Thiang and another tribe, all representatives of each side, previously at loggerheads with each other over internal affairs, will join together in forwarding the interests of their own people.

621 692 The spirit of compromise usually prevails. In disputes which are hotly contested it has been usual to bring in chiefs from other tribal areas to act as neutral arbitrators, and from this appeal courts have been formed, although in the recent past it was the District Commissioner who acted in this capacity. The balanced opposition of groups is therefore still an essential feature of the Nuer court system, and in this sense the courts are a stabilising factor in the maintenance or re-emphasis of group identity.

The Introduction of Penal Sanctions

671 Some of the more general effects of the introduction of ordered administration and the establishment of Nuer tribunals have already been mentioned. We must now consider the effects of these influences on the nature of the law itself. We have seen that in the past, with the exception of the most rudimentary form of public and collective action which was sometimes taken against witches and other anti-social persons, there was nothing to suggest the existence of public law among the Nuer. The law, if we are justified in speaking of the law in reference to the past, comprised all those rules of conduct which regulated the behaviour of individuals and of groups, were maintained by indeterminate and relative sanctions, and were directed to the continuance of equilibrium in society. Since society among the Nuer is segmentary, this aspect is particularly obvious in what we have called the 'balanced opposition' of the component segments. Nowadays people who refuse to conform to the accepted pattern of behaviour, whether by the avoidance of duties or by the violation of the

8:Howell E, G-5 (1942-1944)1954
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rights of others, may be punished by fine or imprisonment. Moreover certain legal wrongs, which in the past were never more than private delicts and were composed by the payment of compensation aimed at the restoration of this balance, are now becoming criminal offences in a more exact definition.

Under the influence of the Administration over the last twenty years or more the Nuer, as represented by their local authorities, are rapidly becoming conscious of the value of punishment as a deterrent. Court members will sometimes say that they are punishing a man both because his action has been detrimental to society as a whole and has created a disturbance, and also because such disruptive actions must be checked. Public opinion as a whole is not advancing very rapidly in this respect, and it is significant that there is still no social stigma attached to imprisonment. The average Nuer does not understand why imprisonment should be inflicted at all, especially if compensation is also paid to the injured party. This is apparent, but it is perhaps worth while to consider this attitude in connexion with certain offences. We have already noted that the Nuer cannot understand why a man should be punished for killing his wife.[1] The damage done has been done to himself, and though he must make peace with his ancestral spirits, for he has sinned against the whole concept of kinship and the continuity of the lineage, and must pacify his wife's relatives with gifts and acts of atonement, nothing more should be demanded of him. His act, like suicide and fratricide, is the negation of the basic principles which underlie kinship. He has used the cattle of his lineage to marry a wife, he has killed her, lost the cattle, and compromised his position in posterity. His act is reprehensible enough for these reasons, but why should he also receive punishment at the hands of the Government? Similarly, an act of adultery requires an indemnity to be paid to the man whose rights have been infringed. Once paid, what need is there for fine or imprisonment? This is a general attitude, even though punishment is so frequently applied that the Nuer have come to expect it and even demand its application to those who have transgressed against them.

When we come to analyse the position more closely, however, we find that there are few offences which can yet be classified as criminal. Homicide and bodily injury are the main exceptions to this observation. Murder is often punished by death and other forms of homicide are now settled by the payment of fifty head of cattle.[2] Forty of these go to the kinsmen of the deceased in the traditional manner, but ten go to the Government and must be called a fine. In addition, unless there are exceptional circumstances whilth mitigate the offence, the killer is sentenced by the court to imprisonment for a period varying from one to six years. Though in the early stages of administration

[1] See p. 60. [2] See pp. 63 et seq.

8:Howell E, G-5 (1942-1944)1954
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692 this was usually inflicted by the District Commissioner sitting as a
681 magistrate, or by the court on the advice of the District Commissioner, this form of sentence is now imposed almost automatically. Yet although there are clearly some Nuer chiefs who realize the value of imprisonment as a deterrent, the majority would not impose such a sentence without pressure from the administration. Moreover such punishments are often inflicted without due consideration of the circumstances of the case, and it is symptomatic of the general attitude to punishment that court members have a habit of asking for fixed sentences to be laid down for specific offences. It is, indeed, one of the problems of the Administration to explain to the Nuer that, though there may be a maximum penalty for an offence, this need not necessarily be applied. The reason is that, although Nuer chiefs and court members may be aware of the value of punishment, they are still reluctant to inflict it, especially as they are often subjected to recrimination by their fellows after the case is over. A fixed penalty absolves them from this and throws the responsibility on the Government. Nevertheless homicide and hurt must now be classed as criminal offences among the Nuer because they are habitually treated as such, albeit under protest. This observation may be applied also to theft.

[681] In other offences in which punishment is sometimes but not always applied, we find that it is not usually the offence itself which is treated as a criminal action but the offender's action in disobeying the orders of the local authorities or the court. The punishment is inflicted for the defiance of authority by the offender rather than for the offence he had originally committed.

681 It is also clear that the introduction of penal sanctions has sometimes led to a curious mixture of legal concepts. For example, adultery
684 is, as we have already seen, an offence which is normally compounded by payment of compensation to the wronged husband. Even though offenders are sometimes punished for persistent attention to the wives of others or for flagrant defiance of the orders of their chiefs, adultery remains essentially a private delict. For the reasons already described,[1] if a divorce follows an act of adultery, it is a fundamental principle among the Nuer that the compensation cattle must be returned to the adulterer and should not be retained by the woman's kin[1]and, who would otherwise pass them to her family. To do so is to risk a confusion of legal status which Nuer law seeks to avoid. Owing to a recent decision by the Council of Nuer Chiefs, these cattle must now be paid to the Government and thus become a fine. Adultery, initially
•671 a private delict, becomes a public delict, and a criminal offence should
177 the husband decide to dissolve the union subsequently. There is therefore growing up a curious admixture of traditional Nuer law, which in basis and principle is essentially private law, and European

[1] See pp. 176-8.

8:Howell E, G-5 (1942-1944)1954
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legal concepts. This process of admixture may be seen in other legal matters and is leading to an illogical and confusing evolution. It is no part of this book to predict what will occur in the future, but it is obvious that some sort of order must be applied to a system which may otherwise become chaotic.

We have been considering throughout these chapters a system of law in a segmentary society which is in a state of evolution. In the first place this evolutionary process is rooted in the traditional methods of controlling the acts of individuals and groups, none of which methods was rigid or enforceable. The application of the principles which we have found was not constant in time or place, but was subject to the balanced opposition of the segments of Nuer society. The evolution has also been deeply affected by decisions made in the courts, often by the direct intervention of British officials who had neither knowledge nor understanding of the principles involved. Often, too, these decisions were made in the mistaken idea that this was justice, without realising that Nuer ideas of justice are often different from our own. Further decisions have been made which spring directly from the penal code of the country and the penal sanction enters as an active force in the administration of the law, but often without order or consistency. An attempt is being made in one direction to introduce a system which recognizes the fundamental principle of individual responsibility, in another to preserve a system which is essentially based on the principles of collective responsibility. These latter principles will continue to be effective so long as Nuer society remains homogeneous and retains its present form. Yet despite these conflicting forces, we cannot say that the customary law now administered in the Nuer courts is based not on Nuer principles but on our own. If this were so the Nuer, who are a hot-tempered and independent people, would not submit to it.

10:Evans-Pritchard E-5 (1931-1936) 1940
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The balanced opposition of political segments is, we believe, largely maintained by the institution of the feud which permits a state of latent hostility between local communities, but allows also their fusion in a larger group. We say that the hostility is latent because even when a feud is being prosecuted there is no uninterrupted endeavour to exact vengeance, but the kinsmen of the dead may take any opportunity that presents itself to accomplish their purpose; and, also, because even when compensation has been accepted the sore rankles and the feud may, in spite of settlement, break out again, for Nuer recognize that in sentiment a feud goes on for ever. The leopard-skin chief does not rule and judge, but acts as mediator through whom communities desirous of ending open hostility can conclude an active state of feud. The feud, including the role played in it by the chief, is thus a mechanism by which the political structure maintains itself in the form known to us.

The leopard-skin chief may also act as mediator in disputes concerning ownership of cattle, and he and the elders on both sides may express their opinion on the merits of a case. But the chief does not summon the defendants, for he has neither court nor jurisdiction and, moreover, has no means of compelling compliance. All he can do is to go with the plaintiff and some elders of his community to the home of the defendant and to ask him and his kinsmen to discuss the matter. Only if both sides are willing to submit to arbitration can it be settled. Also, although the chief, after consultation with the elders, can give a verdict, this verdict is reached by general agreement and in a large measure, therefore, arises from an acknowledgement by the defendant's or plaintiff's party that the other party has justice on its side. It is, however, very seldom that a chief is asked to act as mediator, and there is no one else who has authority to intervene in disputes, which are settled by other than legal methods.

In the strict sense of the word, the Nuer have no law. There is no one with legislative or juridical functions. There are conventional payments considered due to a man who has suffered certain injuries—adultery with his wife, fornication with his daughter, theft, broken limbs, &c.—but these do not make a legal system, for there is no constituted and impartial authority who decides on the rights and wrongs of a dispute and there is no external power to enforce such a decision were it given. If a man has right on his side, and, in virtue of that, obtains the support of his kinsmen and

10:Evans-Pritchard E-5 (1931-1936) 1940
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they are prepared to use force, he has a good chance of obtaining what is due to him, if the parties live near to one another. The usual way of obtaining one's due is to go to the debtor's kraal and take his cattle. To resist is to run the risk of homicide and feud. It seems that whether, and how, a dispute is settled depends very largely on the relative positions of the persons concerned in the kinship and age-set systems and the distance between their communities in tribal structure. In theory, one can obtain redress from any member of one's tribe, but, in fact, there is little chance of doing so unless he is a member of one's local community and a kinsman. The force of 'law' varies with the position of the parties in political structure, and thus Nuer 'law' is essentially relative, like the structure itself.

During the year I spent with the Nuer, I never heard a case being conducted, either before an individual or before a council of elders, and I received the impression that it is very rare for a man to obtain redress except by force or threats of force. And if the Nuer has no law, likewise he lacks government. The leopard-skin chief is not a political authority and the 'Man of the Cattle' and other ritual agents (totemic specialists, rain-makers, fetish-owners, magicians, diviners, &c.) have no political status or functions, though they may become prominent and feared in their locality. The most influential men in a village are generally the heads of joint families, especially when they are rich in cattle, of strong character, and members of the aristocratic clan. But they have no clearly defined status or function. Every Nuer, the product of a hard and equalitarian upbringing, deeply democratic, and easily roused to violence, considers himself as good as his neighbour; and families and joint families, whilst co-ordinating their activities with those of their fellow villagers, regulate their affairs as they please. Even in raids, there is very little organization, and leadership is restricted to the sphere of fighting and is neither institutionalized nor permanent. It is politically significant only when raids are controlled and organized by prophets. No Nuer specialists can be said to be political agents and to represent, or symbolize, the unity and exclusiveness of local groups, and, apart from the prophets, none can be said to have more than local prominence. All leaders, in this vague sense of influential persons in a locality, are adults and, except for an occasional prophetess, all are men.

15: Butt E-4 (No date) 1952 F 322 Nuer F 322

721 grain supplies, women and so forth, but it has been suggested that war between the two groups is a structural relationship.(1) The Nuer have incorporated a considerable area of Dinkaland into their own territories and have also absorbed the Dinka population: the result has been fusion and not a class structure.(2)

THE NATURE OF LAW AMONG THE NUER

The settlement of feuds is effected only when both parties to a dispute are willing to come to an agreement and apply to the *leopard-skin chief* as mediator. He hears the matter discussed by both sides, and then gives his opinion, which is accepted as a verdict if both parties agree to it. He cannot order a discussion or compel either party to accept a decision. Compensation in cattle, according to a recognised scale, is paid for homicide, adultery, fornication and physical injury.

754 Sorcerers are killed by individuals or groups; it does not appear that any actions are regarded as injurious to the whole community.

•671 Law is relative to the positions of the parties in the social structure, and to the distance between them in the kinship, lineage, age-set and political systems. The more widely separated are the two parties to a dispute the weaker is the obligation to settle it and the more difficult the task of enforcing settlement. Unless a man resorts to self-help and is backed by powerful kinsmen and by public opinion, he has little chance of redress. Traditional modes of settling disputes, a recognition of a notion of right *(rueng)* and the acknowledgment of certain scales of compensation, form the basis of Nuer law.

RECOGNISED SOCIAL FIGURES AMONG THE NUER

The Leopard-Skin Chief (kuaar nuaar)

791 He is a sacred person and is believed to have a mystical association
634 with the earth which gives him certain ritual powers to bless or curse it. His acts are mainly of a ritual nature and he has no great political authority, though some importance attaches to his since relations between groups are regulated through him;(3) his powers do not, however, normally extend beyond a tribal section. He functions are as follows:-

(a) His intervention is necessary in settling feuds and disputes. Leopard-skin chiefs sometimes prevent fights between two communities by running between the two opposing forces, blowing up earth here and there. Probably this can only be done when the majority on both sides is unwilling to come to blows.

(b) He performs ritual to cleanse those who have broken incest rules.

(c) He has slight rain-making powers.

(1) Evans-Pritchard, *The Nuer*, 1940, p.121.
(2) *Ibid.*, p.122. (3) *Ibid.*, p.174.